IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Crl.MC.No. 3368 of 2004()

CC.420/2004 of JUDL.MAGISTRATE OF FIRST CLASS-I, KARUNAGAPPALLY

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PETITIONER(S):

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1. SRI.K.K.KUNCHU, LICENSEE,
   S.A.C.BAKERY, PETTAH JN., KANJIRAPPALLY
   NOW RESIDING AT KOZHIKKATTIL, ANAKKALU,
   KANJIRAPALLY.(EXPIRED)

2. SAJAN.C.J.,
   VENDOR, S.A.C.BAKERY,
   PETTAH JN., KANJIRAPPALLY,
   RESIDING AT CHITTILAPPALLY HOUSE,
   MULAMKUNNATHUCAVU, PUTHANMADOMKUNNU, THRISSUR.

   (IT IS RECORDED THAT THE FIRST PETITIONER EXPIRED
   AS PER ORDER DATED 5.7.2005 IN CRL.M.C.3368/04)

BY ADV. SRI.P.M.KUNJIMOIDEENKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

RESPONDENT(S):

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1. P.V.BABU RAJAN, FOOD INSPECTOR,
   KANJIRAPALLY CIRCLE.

2. STATE OF KERALA REPRESENTED BY
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA.

   PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.HEMA, J.

Crl.M.C.NO.3368 of 2004

Dated this the 30th day of November, 2007

O R D E R

Petitioners are accused in Annexure-B complaint. The complaint is filed by the Food Inspector, alleging offence under the Prevention of Food Adulteration Act (for short, 'the Act').

2. According to the complainant, on 21.10.2003 at 4.30 PM, the complainant/first respondent entered the premises of the bakery which is run under licence obtained by the second accused (first petitioner). In the presence of witnesses, milk chocolate (Cadbury Dairy Milk) packets were purchased from the second petitioner (first accused)who was present in the bakery in accordance with the provisions contained in the Act and the Rules. On an analysis of the article, the Public Analyst reported that the sample is adulterated under Section 2(ia)(f) of the Act. The article contained uric acid which is injurious to health and hence it is unfit for human consumption. After complying with the formalities under the Act and the Rules, a complaint was filed against the petitioners.

3. Heard. Learned counsel for the petitioners (first petitioner is reported dead) submitted that second petitioner, who is the vendor, cannot be proceeded against, since the article of food which is alleged to be adulterated was purchased from the licenced distributor with a

written warranty with a prescribed form as Annexure-C. The bill, as per which the article is purchased, also produced as Annexure-D. Therefore, as per Section 19(2) of the Act, the vendor shall not be deemed to have committed an offence pertaining to the sale of such adulterated article, since the article is purchased from a licensed distributor with a written warranty in the prescribed form. As per Section 19(2) of the Act, second petitioner cannot be proceeded against, is the contention.

4. It was further argued that the allegations in the complaint itself revealed that the article was not manufactured by petitioners. The second petitioner is only a vendor and the first petitioner is a licensee and the article was purchased from the distributor. Therefore, going by the allegations in the complaint itself, read with Annexures C and D, it is strongly contended that the vendor cannot be deemed to have committed the offence in respect of the article purchased by the complainant and the proceedings have to be quashed. On hearing both sides, I find it necessary to extract a portion from the complaint. It is alleged in the complaint as follows:

> "As per the label on the packet, the said chocolate was manufactured by Cadburry India Ltd., 19,B. Desai Road, Mumbai-400 026. For getting the details of M/s.Cadburry India Ltd., I sent a letter to M/s.Cadburry India Ltd., and to the concerned Local (Health) Authority. But no reply have been received till date. Hence the name

and address of the responsible persons of M/s.Cadburry India Ltd., will be included in the list of accused after getting the details from the concerned authorities."

5. It is also necessary to read Section 19(2) of the Act. Section 19(2) reads as follows :

"19. **Defences which may or may not be allowed in prosecutions under this Act**.-

(1) xx xx

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves-

(a) that he purchased the article of food

(i) in a case where a licence is prescirbed for the sale thereof, from a duly licensed manufacturer, distributor or dealer,

(ii) in any other case, from any manufacturer, or dealer, with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it."

6. To claim the benefit under sub-section (2) of Section 19 of the Act by the vendor and to substantiate that he cannot be deemed to have committed the offence pertaining to the sale of the adulterated article, vendor has to prove the relevant facts stated in sub-clauses (a) and (b). According to petitioners, the article is purchased under a

warranty from a licensed distributor and hence, he is not liable for the offence under the Act. It is true that a vendor shall not be deemed to have committed an offence pertaining to sale of adulterated article of food he proves that he purchased the said article from a distributor, provided licence is prescribed for such sale.

7. But a reading of sub clause (b) of sub section (2) of Section 19 of the Act reveals that in addition to the fact proving that the article was purchased from a distributor it must be further proved that the purchase was with a written warranty in the prescribed form and it has to be established that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it. The requirements under clauses (a) and (b) are to be established by vendor. The vendor is bound to establish the requirements under both clauses (a) and (b) of sub section (2) of Section 19 of the Act to get benefit under the said provision for a court to declare that the vendor has not committed the offence pertaining to the sale of a particular adulterated food.

8. It has to be established that the vendor purchased the article of food, in case where a licence is prescribed or the sale thereof from a duly licensed manufacturer, distributor or dealer and in any other case from any manufacturer, distributor or dealer with a written warranty in

the prescribed form and that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it. The requirement under Section 19(2)(b) is significant and it can be established only by giving evidence to support such requirement. It is not sufficient if a warrant or a bill is produced to claim that the vendor cannot be deemed to have committed the offence and that he cannot be proceeded against. The proof of facts referred to in Section 19(2)(a) and (b) involves not mere production of a warranty.

9. Learned counsel for the petitioners submitted that Annexure-D will show that the article was purchased on 16.10.2003 and the sampling was done on the 6th day of the purchase and hence there was hardly any time for the vendor or licencee to alter the nature of the article. This is not a matter to be stated in a petition under Section 482 Cr.P.C. But those facts are to be proved by adducing evidence. Further, disputed question of facts cannot be resolved in a proceeding under Section 482.

10. In the above circumstances, the proceeding against the petitioners cannot be quashed under Section 482 of the Code. It is made clear that the observations, if any, made in this order will not affect the right of the petitioners to raise the same contentions before

the trial court and the trial court will consider the same untrammelled by any of the observations made in this order.

This petition is dismissed.

K.HEMA, JUDGE

vgs.